



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Maytag Aircraft Corporation--Request for  
Reconsideration; Claim for Protest Costs

**File:** B-237068.2

**Date:** November 13, 1989

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### DIGEST

1. Dismissal of protest challenging award to other than the low offeror without discussions is affirmed where, shortly after filing of protest, agency corrected deficiency by opening discussions with all offerors in the competitive range and requesting best and final offers; although protester's requested relief was award of contract to itself, since such relief was not appropriate, dismissal of protest as academic based on agency's appropriate corrective action was proper.

2. Claim for proposal preparation and protest costs where agency took corrective action remedying alleged procurement defect in response to protest is denied since award of protest costs is contingent upon issuance of decision on merits finding that agency violated a statute or regulation in the conduct of a procurement.

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### DECISION

Maytag Aircraft Corporation requests reconsideration of our October 16, 1989, dismissal of its protest of the award to K & M Maintenance Services, Inc., under request for proposals (RFP) No. F33601-89-R-9002, issued by the Air Force for personnel, equipment and services concerning fuels management and distribution. Maytag requests that its protest be reinstated, that a decision be issued on the merits, and that it be awarded proposal preparation costs and the costs of pursuing the protest.

We affirm our dismissal and deny the claim for costs.

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In its protest filed with our Office on September 22, Maytag, the apparent low-priced offeror, asserted that award to K & M on the basis of its higher priced initial proposal, without discussions with Maytag and other offerors, violated the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2305(b)(4)(A)(ii) (1988), which allows acceptance of an initial proposal without discussions where the award would result in the lowest overall cost to the government. After the protest was filed, but before submission of the agency report, the agency informed our Office by memorandum of October 13, of its intent to initiate discussions with all offerors and thereafter to request best and final offers. In consideration of the agency's proposed action, which would eliminate the alleged deficiency, we dismissed the protest as academic.

In its request for reconsideration, Maytag argues that since the relief it requested, i.e., termination of K & M's award and award of a contract to itself, was not granted, the firm's protest in fact was not academic and should be reinstated, and decided on the merits.

There is no basis for reopening the file. The agency's decision to open discussions with all offerors and then request best and final offers did render the protest--which challenged the propriety of an award without discussions to other than Maytag, the low offeror--academic. See Storage Technology Corp., B-235308, May 23, 1989, 89-1 CPD ¶ 495. Notwithstanding that Maytag requested different relief, the corrective action taken by the agency was appropriated for the deficiency alleged; this would have been precisely the relief we would have recommended had we decided the merits. See Kaufman Lasman Assoc., Inc., et al., B-229917 et al., Feb. 26, 1988, 88-1 CPD ¶ 202, aff'd on reconsideration, B-229917.3, Mar. 16, 1988, 88-1 CPD ¶ 271. Under these circumstances, no useful purpose would be served by further consideration of the protest, and it therefore is academic. See Associated Professional Enters. Inc., B-231766, Oct. 12, 1988, 88-2 CPD ¶ 343.

We also find no basis for Maytag's claim for proposal preparation and protest costs, including attorneys' fees. We have consistently held that a protester is not entitled to reimbursement of its cost where the protest is dismissed as academic, so that we do not issue a decision on the

merits. See, e.g., Service Ventures, Inc., B-233740.3, Aug. 24, 1989, 68 Comp. Gen. \_\_\_, 89-2 CPD ¶ 172; Teknion, Inc.--Claim for Protest Costs, 67 Comp. Gen. 607 (1988), 88-2 CPD ¶ 213; Technology & Management Servs., Inc., B-231025.4, June 1, 1988, 88-1 CPD ¶ 531.1/

The dismissal is affirmed and the claim is denied.

  
James F. Hirschman  
General Counsel

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1/ In this regard, we recently published in the Federal Register (see 54 Fed. Reg. 14351 (1989)), a notice announcing a review of our protest regulations and inviting the public to comment on how we might improve the protest process. As part of that review, we will consider comments pertaining to the award of costs. See Storage Technology Corp., B-235308, supra.